

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

ARMANDO YBARRA,) CASE NO. 4:13-CV-00963-O
)
Plaintiff,) JUDGE REED C. O'CONNOR
v.)
)
DISH NETWORK L.L.C.,)
)
Defendant.)

**NOTICE OF SETTLEMENT AND STIPULATION OF DISMISSAL
WITH PREJUDICE AS TO NON-ADJUDICATED CLAIMS**

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), Plaintiff Armando Ybarra and DISH Network L.L.C. (“DISH”) stipulate to the dismissal with prejudice of all claims for which summary judgment was not granted in Plaintiff’s favor in the Court’s November 14, 2014 Memorandum Opinion and Order. (See Doc. 64.)

This stipulation does not apply to or affect the adjudicated seven telephone calls from the (866) 668-8047 telephone number as adjudicated in the Court’s Memorandum Opinion and Order (Doc. 64) and does not impact DISH’s right to appeal that Order, which issues are addressed in the separately filed joint proposed judgment entry.¹ *See United States ex rel Longhi v. Lithium Power Techs., Inc.*, 575 F.3d 458, 464-65 (5th Cir. 2009) (dismissing portion of claim under Rule 41(a)(1)(A)(ii) and preserving prior ruling for appeal).

¹ *See SmallBizPros, Inc. v. MacDonald*, 618 F.3d 458, 463 n. 3 (5th Cir. 2010) (“There is no prohibition in Rule 41(a)(1)(A)(ii) against parties adding explicit conditions to their stipulation of dismissal[.]”)

Dated: December 10, 2013

Respectfully submitted,

/s/ Jenny DeFrancisco

Jenny DeFrancisco (#432383)
Lemberg Law, L.L.C.
1100 Summer Street, 3rd Floor
Stamford, CT 06905
203-653-2250 Phone
203-653-3424 Fax
jdefrancisco@lemb erglaw.com

/s/ Benjamen E. Kern

Benjamen E. Kern
State Bar No. 24086853
Benesch, Friedlander, Coplan & Aronoff LLP
41 South High Street, Suite 2600
Columbus, Ohio 43215
614-223-9300 Telephone
614-223-9330 Facsimile
bkern@beneschlaw.com

/s/ Eric L. Zalud

Eric Larson Zalud
Admitted Pro Hac Vice
Benesch, Friedlander, Coplan & Aronoff LLP
200 Public Square, Suite 2300
Cleveland, Ohio 44114
216-363-4178 Telephone
216-363-4588 Facsimile
ezalud@beneschlaw.com

/s/ Vic Henry

Vic Houston Henry
State Bar No. 09484250
vhenry@hoaf.com
HENRY ODDO AUSTIN & FLETCHER
A Professional Corporation
1700 Pacific, Suite 2700
Dallas, Texas 75201
214-658-1900 Telephone
214-658-1919 Facsimile

/s/ Lane Fletcher

Lane Fletcher
State Bar No. 07139300
lanefletcher@hoaf.com
HENRY ODDO AUSTIN & FLETCHER
A Professional Corporation
1700 Pacific, Suite 2700
Dallas, Texas 75201
214-658-1900 Telephone

Attorneys for Defendant DISH Network L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2014, a true and correct copy of the foregoing was filed with the Clerk of Court for the United States District Court for the Northern District of Texas using the CM/ECF system, which will automatically send email notification of such filing to the following attorneys of record:

Benjamen E. Kern, Esq.
Benesch, Friedlander, Coplan & Aronoff, LLP
41 South High Street, Suite 2600
Columbus, Ohio 43215

Eric Larson Zalud, Esq.
Benesch, Friedlander, Coplan & Aronoff, LLP
200 Public Square, Suite 2300
Cleveland, Ohio 44114

Lane Fletcher, Esq.
Vic H. Henry, Esq.
Henry, Oddo, Austin & Fletcher, P.C.
1700 Pacific Avenue, Suite 2700
Dallas, Texas 75201
Attorneys for Defendant

/s/ *Jenny DeFrancisco*
Jenny DeFrancisco, Esq.